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11 XX GLOBAL, INC. and JACQUES WEBSTER

12  
13 UNITED STATES DISTRICT COURT  
14 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION  
15

16 PJAM LLC,  
17 Plaintiff,  
18 vs.  
19 XX GLOBAL, INC., JAQUES  
20 WEBSTER, and DOES 1-20, inclusive,  
21 Defendants.

CASE NO.: 2:18-cv-03192 JFW  
(MRWx)

Hon. John F. Walter

**MEMORANDUM OF  
CONTENTIONS OF FACT AND  
LAW OF DEFENDANTS AND  
COUNTERCLAIMANTS XX  
GLOBAL, INC. AND JACQUES  
WEBSTER**

22 XX GLOBAL, INC. and JACQUES  
23 WEBSTER,  
24 Counterclaimants,  
25 vs.  
26 PJAM LLC, JEFFERSON AGAR,  
27 ALEX MARTINI, PATRICK  
28 JOHNSTONE, and ROES 1 through 10,  
inclusive,  
Counterclaim Defendants.

Pre-Trial Conf.: March 29, 2019

Trial Date: April 9, 2019

Action Commenced: March 20, 2018

Pursuant to Local Rule 16-4 and the Court’s Scheduling and Case Management Order, Defendants and Counterclaimants XX Global, Inc. and Jacques Webster (together, “Defendants”) respectfully submit the following memorandum of contentions of fact and law.

**I. Claims and Defenses [L.R. 16-4.1]**

**(a) Plaintiff’s Claim**

Defendants breached their written contract with Plaintiff PJAM LLC (“PJAM”). (Complaint, ECF No. 1, Ex. A.)

**(b) Elements of Plaintiff’s Claim**

(1) Formation of a contract;<sup>1</sup>

(2) Performance by plaintiff of any conditions precedent to its right to demand performance by defendant;

(3) Breach of the contract by defendant; and

(4) Damages<sup>2</sup>

**(c) Key Evidence in Opposition to Plaintiff’s Claim**

Plaintiff materially breached the Agreement by failing to arrange and confirm an acceptable travel itinerary for Mr. Webster before the event. Months before PJAM asked Mr. Webster to perform at their event in Minnesota on February 3, 2018, Mr. Webster had committed to perform at Marquee Nightclub in Las Vegas at 1:30 a.m. PST on February 4, 2018. Although Mr. Webster had to be in Las Vegas by 1 a.m. later the same night, he agreed with PJAM to perform at the event in Minnesota *on the very important condition* that PJAM would arrange and confirm transportation for Mr. Webster and his management team from Los Angeles to Minneapolis, and then from Minneapolis to Las Vegas—landing in Las Vegas by *no*

<sup>1</sup> The parties stipulate this element is satisfied for the Agreement.

<sup>2</sup> See 4 Minn. Prac., Jury Instr. Guides (6<sup>th</sup> ed., Oct. 2018), Instr. CIVJIG 20.45; *Lyon Fin. Servs., Inc. v. Ill. Paper & Copier Co.*, 848 N.W.2d 539, 543 (Minn. 2014).

1 *later than 1 a.m. PST.* This would ensure that Mr. Webster could make it on time to  
 2 his show at Marquee Nightclub.

3 PJAM was fully aware of Mr. Webster's timeline and the importance of Mr.  
 4 Webster making it to Las Vegas by 1 a.m. Mr. Webster's management team,  
 5 including David Stromberg, repeatedly reminded PJAM (including in text messages  
 6 and emails) of the importance of receiving confirmed travel information (to  
 7 Minnesota and to Las Vegas) *before* Mr. Webster would have had to leave Los  
 8 Angeles. In the days leading up to the event, PJAM consistently represented to Mr.  
 9 Webster's management team that the agreed-upon transportation *would be*  
 10 arranged. Yet, just hours before Mr. Webster was supposed to be "wheels up" from  
 11 Los Angeles heading to Minnesota, PJAM still had not provided a confirmed  
 12 itinerary consistent with the parties' Agreement.<sup>3</sup>

13 Because PJAM failed to provide the agreed-upon transportation for Mr.  
 14 Webster, he did not travel to Minnesota for the event. Mr. Webster was ready,  
 15 willing, and able to appear and perform in Minnesota on the evening of February 3,  
 16 2018, if PJAM had arranged and confirmed transportation for him as agreed.

17 ///

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19 \_\_\_\_\_  
 20 <sup>3</sup> In an itinerary that PJAM first produced to Defendants at the mediation in this  
 21 case, PJAM apparently proposed flying Mr. Webster to St. Cloud Regional Airport  
 22 ("STC"), which is a 69.5-mile drive from the event venue in Maplewood,  
 23 Minnesota. According to that itinerary, Mr. Webster would land at STC at 10:00  
 24 p.m. CST. This means the earliest possible time at which he could have appeared  
 25 and performed at the venue would have been between 11:15 and 11:30 p.m. CST  
 26 (assuming good driving conditions). If Mr. Webster left the venue immediately  
 27 after his 30-minute performance, he could not have made it back to STC until at  
 28 least 1:15 a.m. CST (again, assuming good driving conditions). Given the three-  
 and-a-half hour flight time from STC to McCarran International Airport in Las  
 Vegas, Mr. Webster would not have landed in Las Vegas until at least 2:45 a.m.  
 PST, an hour and a half after PJAM had agreed to get Mr. Webster to Las Vegas.

1 (d) Defendant's Counterclaim

2 Plaintiff breached its written contract with Defendants.<sup>4</sup> (Answer and  
3 Counterclaims, ECF No. 5.)

4 (e) Elements of Defendants' Counterclaim

5 (1) Formation of a contract;

6 (2) Performance by plaintiff of any conditions precedent to its right  
7 to demand performance by defendant;

8 (3) Breach of the contract by defendant; and

9 (4) Damages

10 (f) Key Evidence in Support of Defendants' Counterclaim

11 The key evidence in support of Defendants' counterclaim for breach of  
12 contract against PJAM is the same as the evidence set forth above in opposition to  
13 PJAM's claim for breach of contract against Defendants.

14 Mr. Webster seeks \$50,000 in damages, the additional amount of money  
15 owing to him under the Agreement (which, per the Agreement, PJAM was supposed  
16 to pay in cash immediately after the event). Mr. Webster would have received this  
17 money but for Plaintiff's breach.

18 (g) N/A

19 (h) Other than the issues raised in Joint Motion in Limine Nos. 1 and 2,  
20 Defendants do not anticipate any evidentiary issues at this time.

21 (i) The Agreement is governed by Minnesota law. There are no other  
22 issues of law that Defendants wish to bring to the Court's attention at this time.

23 **II. Bifurcation of Issues** [L.R. 16-4.3]

24 Defendants do not request bifurcation of any issues.

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26  
27 <sup>4</sup> As noted in Section V *infra*, Defendants will pursue at trial only their counterclaim  
28 for breach of contract against PJAM.

1 **III. Jury Trial** [L.R. 16-4.4]

2 Defendants timely demanded a jury trial on all issues. (ECF No. 5 at p. 12.)

3 **IV. Attorneys' Fees** [L.R. 16-4.5]

4 Defendants do not claim that attorneys' fees are recoverable.

5 **V. Abandonment of Issues** [L.R. 16-4.6]

6 Defendants have abandoned the following counterclaims: First Claim for  
7 Relief (Breach of Contract) (ECF No. 5 ¶¶ 23-27) and Second Claim for Relief  
8 (Breach of Implied Covenant) (*id.* ¶¶ 28-32) against Counter-Defendants Jefferson  
9 Agar, Alex Martini, and Patrick Johnston; and Second Claim for Relief (Breach of  
10 Implied Covenant) (*id.* ¶¶ 28-32) against Counter-Defendant PJAM LLC.

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12 DATED: March 14, 2019

KING, HOLMES, PATERNO &  
SORIANO, LLP

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By: /s/ Howard E. King

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HOWARD E. KING

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MATTHEW J. CAVE

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Attorneys for Defendants and  
Counterclaimants XX GLOBAL, INC. and  
JACQUES WEBSTER

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